

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
November 19, 2008 Session

STATE OF TENNESSEE v. DAVID LAWRENCE JONES

**Direct Appeal from the Circuit Court for Dickson County
No. CR8943 George Sexton, Judge**

No. M2008-00985-CCA-R3-CD - Filed August 21, 2009

The appellant, David Lawrence Jones, pled guilty to driving under the influence, fourth offense; driving on a revoked license; violating the open container law; and violating the implied consent law. He received a total effective sentence of two years. As a condition of his plea, the appellant reserved the following certified question of law: “whether the officer’s initial encounter was a ‘seizure’ and, if so, was it supported by probable cause o[r] reasonable suspicion.” Upon our review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court are Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, J., joined. DAVID H. WELLES, J., filed a dissenting opinion.

Michael J. Flanagan, Nashville, Tennessee, for the appellant, David Lawrence Jones.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Dan M. Alsobrooks, District Attorney General; Kelly Jackson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

Prior to the trial date, the appellant filed a motion to suppress, arguing that his initial seizure was not supported by probable cause or reasonable suspicion and that the duration of the seizure was excessive. At the suppression hearing, the sole witness was Dickson Police Officer Josh Ethridge. Officer Ethridge testified that on February 21, 2006, he and Officer Brad Ratchford were on patrol when police dispatch advised them of a call reporting a disturbance at Pleasant Valley Apartments

located off Barbeque Road. Dispatch told the officers that the caller described the person involved as a white male with medium-length hair who was driving a 1980s gray Oldsmobile. As the officers proceeded to the scene of the disturbance, dispatch informed the officers that the vehicle in question was leaving the apartments and “was going to be at Tices Springs Market.” Officer Ethridge stated that “throughout the relay, after they dispatched us there, they also said the driver was possibly intoxicated.”

The officers proceeded to the market and saw a vehicle matching the caller’s description. The vehicle was parked at the south side of the market. Officer Ethridge testified that he radioed dispatch to confirm the description of the vehicle and the driver. The appellant came out of the market and got into the Oldsmobile, and Officer Ethridge pulled his marked police car behind the appellant’s vehicle. Officer Ethridge could not recall if he activated his blue lights or if his vehicle had completely blocked in the appellant’s vehicle. After the police car pulled behind him, the appellant got out of his vehicle and approached the police car. Officer Ethridge got out of his vehicle and asked the appellant if he had been involved in a disturbance at Pleasant Valley Apartments. The appellant told Officer Ethridge about the disturbance. During the conversation, which lasted two or three minutes, Officer Ethridge smelled alcohol on the appellant. Officer Ethridge estimated that less than five minutes elapsed between the time dispatch received the call and the time he made contact with the appellant.

On cross-examination, Officer Ethridge maintained that he “didn’t intentionally block [the appellant’s] vehicle in.” However, he acknowledged that he pulled behind the appellant’s vehicle and that other parking spaces were available in the parking lot. Officer Ethridge asserted that prior to his speaking with the appellant, the appellant could have walked away. He stated:

[I]f I walked up to him or he approached me and I started asking him questions and I smelled alcohol, then at that point in time I would have – no further investigation as far as the alcohol goes, so no he wouldn’t have been able to leave at that time. But before I made contact with him and he would have drove off, he could have drove off.

Officer Ethridge said that if the appellant’s car had been blocked in, he could have walked away.

At the conclusion of the hearing, the trial court found that

the officer had a reasonable suspicion based on specific and articulable facts. He received a call from dispatch and obviously from a citizen complaintant [sic]. While not reaching a level of probable cause, it does rise to a level of reasonable suspicion. The officer got a dispatch and the officer had a duty to follow the directions of the dispatch and respond to the call, which he did. He found the [appellant] in his vehicle, or getting into his vehicle

apparently. The [appellant] got out of the vehicle and approached the officer and the officer having a duty to investigate the complaint, properly did so.

The Court is a little suspicious of the testimony that he was free to walk away. I don't believe – it didn't happen so we don't know for sure. I think having a duty to investigate, the [appellant] wasn't free to walk away. The Court finds he was detained, but properly detained based upon reasonable suspicion.

Thereafter, the appellant pled guilty to the charged offenses, properly reserving a certified question of law, specifically “[w]hether the officer’s initial encounter was a ‘seizure’ and, if so, was it supported by probable cause o[r] reasonable suspicion.”

II. Analysis

In reviewing a trial court’s determinations regarding a suppression hearing, “[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact.” State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Thus, “a trial court’s findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise.” Id. Nevertheless, appellate courts will review the trial court’s application of law to the facts purely de novo. See State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001). Furthermore, the State, as the prevailing party, is “entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence.” Odom, 928 S.W.2d at 23.

Both the Fourth Amendment to the United States Constitution and article 1, section 7 of the Tennessee Constitution prohibit unreasonable searches and seizures by law enforcement officers. These constitutional provisions “‘safeguard the privacy and security of individuals against arbitrary invasions of government officials.’” State v. Munn, 56 S.W.3d 486, 494 (Tenn. 2001) (quoting State v. Bridges, 963 S.W.2d 487, 490 (Tenn. 1997)); see also State v. Downey, 945 S.W.2d 102, 106 (Tenn. 1997). In relation to the Fourth Amendment, our courts have recognized three distinct types of interactions between law enforcement and the citizenry, namely “(1) a full scale arrest which must be supported by probable cause; (2) a brief investigatory detention which must be supported by reasonable suspicion; and (3) brief police-citizen encounters which require no objective justification.” State v. Daniel, 12 S.W.3d 420, 424 (Tenn. 2000) (citations omitted). Our supreme court has explained that “[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.” Id. (quoting Terry v. Ohio, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 1879 n.16 (1968)). In other words, “a ‘seizure’ implicating constitutional concerns occurs only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave.” Id. at 425. In determining when an encounter becomes a seizure, a court should consider all of the circumstances pertaining to the encounter. Id. Some relevant factors are as follows:

the time, place and purpose of the encounter; the words used by the officer; the officer's tone of voice and general demeanor; the officer's statements to others who were present during the encounter; the threatening presence of several officers; the display of a weapon by an officer; and the physical touching of the person of the citizen.

Id. at 426.

In our analysis, we must first determine whether a seizure took place. The appellant contends that "the officer's encounter with the [appellant] did rise to the level of a detention." The trial court found that the appellant "wasn't free to walk away" and was therefore detained. On appeal, the State contends that the appellant "presented no evidence establishing that the encounter between [the appellant and the officer] was anything other than a police-citizen encounter initiated by the [appellant]" and that therefore the trial court erred in finding that a seizure took place. We agree with the trial court that a seizure occurred.

At the suppression hearing, Officer Ethridge testified that although he parked behind the appellant, he was unsure whether the appellant's vehicle was "completely" blocked in. The appellant approached Officer Ethridge only after the police car pulled behind appellant's vehicle. Contrary to the State's assertion, the police, not the appellant, initiated the encounter. Regardless of whether the appellant's vehicle was "completely" or partially blocked in, the record reflects that the police car was parked behind the appellant's vehicle in such a manner that the appellant was not free to leave. See State v. Mary Ann McNeilly, No. M2005-02184-CCA-R3-CD, 2006 WL 3498043, at *6 (Tenn. Crim. App. at Nashville, Nov. 22, 2006). While the detention of the appellant did not rise to the level of a full-scale arrest, see State v. Crutcher, 989 S.W.2d 295, 301-02 (Tenn. 1999), the officer's brief investigatory detention of the appellant needed to be supported by reasonable suspicion, see State v. Gonzalez, 52 S.W.3d 90, 96-97 (Tenn. Crim. App. 2000).

Generally, "[i]nteractions between the police and the public that are seizures but not arrests, are judged by their reasonableness, rather than by a showing of probable cause." State v. Kelly, 948 S.W.2d 757, 760 (Tenn. Crim. App. 1996). "[T]he reasonableness of seizures less intrusive than a full-scale arrest is judged by weighing the gravity of the public concern, the degree to which the seizure advances that concern, and the severity of the intrusion into individual privacy." State v. Pulley, 863 S.W.2d 29, 31 (Tenn. 1993). The United States Supreme Court has held that a law enforcement officer may conduct a brief investigatory stop of an individual if the officer has a reasonable suspicion based upon specific and articulable facts that a criminal offense has been, is being, or is about to be committed. See Terry, 392 U.S. at 21, 88 S. Ct. at 1880; see also State v. Keith, 978 S.W.2d 861, 865 (Tenn. 1998). In evaluating the validity of an investigatory detention, a court must consider the totality of the circumstances. United States v. Sokolow, 490 U.S. 1, 8, 109 S. Ct. 1581, 1585 (1989); State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992). These circumstances include, but are not limited to, "[the officer's] objective observations, information obtained from other police officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders." Watkins, 827 S.W.2d at 294.

In the instant case, the officer's detention of the appellant was based upon the information he gained from dispatch about a disturbance and possible drunk driver near an apartment complex. Dispatch obtained the information from an anonymous caller. "[W]hen information is provided by an anonymous citizen, this raises heightened concerns about the reliability of the information, such as the possibility of 'false reports, through police fabrication or from vindictive or unreliable informants.'" State v. Wilhoit, 962 S.W.2d 482, 487 (Tenn. Crim. App. 1997) (quoting Pulley, 863 S.W.2d at 31). Therefore, reports from an anonymous informant must meet the Aguilar/Spinelli test. See State v. Jacumin, 778 S.W.2d 430, 436 (Tenn. 1989); see also Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584 (1969); Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509 (1964). In other words, "[t]he analysis of an anonymous tip involves consideration of the informant's basis of knowledge and reliability and of any corroborating circumstances known to the police." State v. Luke, 995 S.W.2d 630, 637 (Tenn. Crim. App. 1998); see also Kelly, 948 S.W.2d at 761. While the Aguilar/Spinelli factors are useful in determining reasonable suspicion, courts should be mindful that

"[r]easonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause."

Pulley, 863 S.W.2d at 32 (quoting Alabama v. White, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990)).

In the instant case, the trial court found that "the officer had a reasonable suspicion based on specific and articulable facts. He received a call from dispatch and obviously from a citizen complainant [sic]." However, there is no evidence in the record to indicate that the call came from a citizen informant. Thus, we must treat the call as a tip from an anonymous informant.

This court has previously stated that

[a]lthough it is difficult to assess the basis of knowledge or the credibility of an anonymous caller, independent corroboration by police officers can cure deficiencies in showing the reliability of the information. We also note that reasonable suspicion requires a lower level of proof than probable cause, allowing for citizen information that is less reliable than that required for probable cause showings.

Wilhoit, 962 S.W.2d at 487 (citations omitted).

In the instant case, the anonymous caller reported a disturbance and described an individual and the car the individual was driving. The caller stated that the driver involved in the disturbance was "possibly intoxicated," and was leaving the apartments. Within five minutes of the report,

Officer Ethridge found a car matching the description in the parking lot of the Tices Springs Market, where the anonymous caller said it would be. Then, the appellant, who also matched the description given by the caller, came out of the market and got into the car. “When an informant reports an incident at or near the time of its occurrence, a court can often assume that the report is first-hand, and hence reliable[,] . . . impl[ying] an eyewitness basis of knowledge.” Pulley, 863 S.W.2d at 32. Moreover, Officer Ethridge corroborated several details of the reports, indicating the informant’s credibility. Id.

Our supreme court has stated that “reliability of the informant’s tip is not the only determinant of the reasonableness of [a detention]. The content of the tip is also a crucial factor and, in particular, the level of danger that the tip reveals.” Pulley, 863 S.W.2d at 32. This court has previously stated that “[c]ertainly the gravity of the concern over drunken driving is significant because of its threat to the safety of any citizen on the public roads.” Wilhoit, 962 S.W.2d at 488. In the instant case, the intrusion was relatively minor; the officer intended to only briefly detain the appellant to investigate the informant’s tip. See Pulley, 863 S.W.2d at 34. Therefore, we, like the trial court, conclude that the officer had reasonable suspicion to briefly detain the appellant.

III. Conclusion

Finding no reversible error, we affirm the judgment of the trial court.

NORMA McGEE OGLE, JUDGE